UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
VU, THONG H

ART UNIT	PAPER NUMBER
2142	

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	08/799,073	DAVIS ET AL.
	Examiner	Art Unit	
	Thong H. Vu	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _30 July 2004_.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-8,10-21 and 23-30_ is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) _1-8,10-21,23-30_ is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
    1.☐ Certified copies of the priority documents have been received.
    2.☐ Certified copies of the priority documents have been received in Application No. _____.
    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

1.   Claims 1-8,10-21,23-31 are pending. The rejection is cited as stated below.

2.   According the BPAI decision remand to Examiner, 7/30/04. The finality action is

withdrawn. The Non-final is follow.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3.   Claims 1,13,19,24,28,29 and 30 are rejected under 35 U.S.C. 101 because the

claimed invention is not supported by either a specific and substantial asserted utility or

a well established utility.

Claims 1,19 30 discloses the RX or Write module, claims 13,24, 29 discloses the

Read or TX module. Claims 28 claimed both Read-Write modules. It's vague,

ambiguous and inconsistent.

Claim Rejections - 35 USC § 112

4.   Claims 1,13,19,24,29 and 30 are also rejected under 35 U.S.C. 112, first

paragraph. Specifically, since the claimed invention is not supported by either a specific

and substantial asserted utility or a well established utility for the reasons set forth

above, one skilled in the art clearly would not know how to use the claimed invention.

(i.e.: Claims 1,19 30 discloses only the RX or Write module, claims 13,24, 29

discloses the Read or TX module).

5.   Claims 1,13,19,24,28,29 and 30 are rejected under 35 U.S.C. 112, second

paragraph, as being indefinite for failing to particularly point out and distinctly claim the

subject matter which applicant regards as the invention.

        Claims 1,13,19,24,29,30 are indefinite to claim the first version without any

second version.

        The subject matter of a properly construed claim is defined by the terms that limit its scope. It is
this subject matter that must be examined. As a general matter, the grammar and intended meaning of
terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or
makes optional but does not require steps to be performed or does not limit a claim to a particular
structure does not limit the scope of a claim or claim limitation. The following are examples of language
that may raise a question as to the limiting effect of the language in a claim:
(A)   statements of intended use or field of use,
(B)   "adapted to" or "adapted for" clauses,
(C)   "wherein" clauses, or
(D)   "whereby" clauses.
This list of examples is not intended to be exhaustive. >See also MPEP § 2111.04.< Office personnel
must rely on the applicant's disclosure to properly determine the meaning of the claims. Markman v.
Westview Instruments, 52 F.3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir.) (en banc), aff'd, U.S., 116
S. Ct. 1384 (1996). Claim terms are presumed to have the ordinary and customary meanings attributed to
them by those of ordinary skill in the art. Sunrace Roots Enter. Co. v. SRAM Corp., 336 F.3d 1298, 1302,
67 USPQ2d 1438, 1441 (Fed. Cir. 2003); Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc., 334 F.3d
1294, 1298, 67 USPQ2d 1132, 1136 (Fed. Cir. 2003)("In the absence of an express intent to impart a
novel meaning to the claim terms, the words are presumed to take on the ordinary and customary
meanings attributed to them by those of ordinary skill in the art.") However, an applicant is entitled
to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their
ordinary and customary meaning by clearly setting forth a definition of the term that is different from its
ordinary and customary meaning. See In re Paulsen, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed.
Cir. 1994) >and Vitronics Corp. v. Conceptronic Inc., 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1576 (Fed.
Cir. 1996)<. Where an explicit definition is provided by the applicant for a term, that definition will
control interpretation of the term as it is used in the claim. Toro Co. v. White Consolidated Industries Inc.,
199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not
construed in a "lexicographic vacuum, but in the context of the specification and drawings."). Any special
meaning assigned to a term "must be sufficiently clear in the specification that any departure from
common usage would be so understood by a person of experience in the field of the invention."
Multiform Desiccants Inc. v. Medzam Ltd., 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir.
1998). See also MPEP § 2111.01. If the applicant asserts that a term has a meaning that conflicts with the
term's art- accepted meaning, Office personnel should encourage the applicant to amend the claim to
better reflect what applicant intends to claim as the invention. If the application becomes a patent, it
becomes prior art against subsequent applications. Therefore, it is important for later search purposes to
have the patentee employ commonly accepted terminology, particularly for searching text-searchable
databases.

Double Patenting

6.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-9,11-21,23-31 are rejected on the ground of nonstatutory double patenting over claims 1-30 of U. S. Patent No. 6,272,521 B1 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

| ('521) . Apparatus for allowing a first object-oriented program created with a <u>first framework version</u> to polymorphically stream object information to a second object-oriented program created with a <u>second framework version</u>, the apparatus comprising: | (Application) 28. A computer system comprising first and second computers that transmit a data segment in a data stream from the first computer to the second computer, the <u>first computer comprising mean</u> for implementing a first selected one of a plurality of versions of a streaming protocol, and the <u>second computer comprising</u> |

	mean, for implementing a second selected one of the plurality of versions of the streaming protocol, wherein the second selected one of the plurality of versions of the streaming protocol is additive to the first selected on of the plurality of versions of the streaming protocol, and wherein:
a stream writer function in the first object-oriented program for generating a stream that contains both original object information recognized by the first object-oriented program followed by substitute object information recognized by the second object-oriented program in the same stream; and	(a) the first computer includes a write module for transmitting the data segment, wherein the write module outputs a first stream of data according to a first version of the streaming protocol, and if the first selected version is not the first version of the streaming protocol, the write module sequentially appends to the first stream of data additional streams of data according to each subsequent version of the streaming protocol up to and including the first selected version; and
a stream reader function in the second object-oriented program, responsive to streamed object information for examining the streamed object information to determine whether the original object information is recognized by the second object-oriented program and for reading the original object information from the stream when the original object information is recognized by the second object-oriented program and for skipping the original object information and reading the substitute object information from the stream when the original object information is not recognized by the second object-oriented program.	(b) the second computer includes a read module for receiving the data segment from the first computer, wherein the read module receives the first stream of data, wherein if the second selected version is earlier than the first selected version, the read module receives each additional stream of data according to each subsequent version of the streaming protocol up to and including the second selected version, and disregards any remaining data in the data segment, wherein if the second selected version is equal to or later than the first selected version, the read module sequentially receives the addition streams of data according to each subsequent version of the streaming protocol up to and including the second selected version, and wherein, prior to receiving each additional stream of data, the read module detects whether an end of the data segment has been detected, and if so, terminates reception of the data segment prior to receiving the additional stream of data according to the second selected version.

The '521 does not explicitly detail the function of the Read-Write modules. It was

clearly that an ordinary skill in the art could manipulate the Read/Write modules to

perform the well-known functions (i.e.: verify the second selected version is equal or

later the first selected version or additional stream, detect the end tag or begin tag

which are well-known in the data streaming art) as described in the pending

application.

Furthermore, there is no apparent reason why applicant was prevented from

presenting claims corresponding to those of the instant application during prosecution of

the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158

USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-8,10-21,23-31 are rejected under 35 U.S.C. 103(a) as obvious over

Wilcox, et al [Wilcox 5,568,639] in view of Williams et al [Williams 5,467,472].

7.   As per claim 1, Wilcox discloses a method of transmitting a data segment in a

stream using <u>a write module</u> of the type which implements a selected one of a plurality

of versions of a streaming protocol outputting a first stream of data according to a first

version of the streaming protocol [Wilcox, in-stream, col 2 line 52; read-write the value

of container or object, col 8 lines 28-36; an earlier version, col 9 lines 56-60];

sequentially appending additional streams of data [Wilcox, the sequentially-

appended objects, col 17 lines 58-67] to the first stream of data according to each

subsequent version of the streaming protocol up to [Wilcox, every additive alteration

(insert, replace, append) creates a new object, col 29 lines 38-57; subsequent updating,

col 17 lines 58-67] and including the selected version [Wilcox, the alteration selected

and type of object, col 8 lines 13-28; unique object sequence numbering, col 24 lines

54-63; it was clearly that the object-oriented programming facilitates the association of

objects with one another, i.e.: the subsequent version, by program]; and

delimiting the data segment in the data stream begin and end tags [Wilcox,

delimiting symbol, col 6 lines 17; start and end flags, col 27 lines 1-18].

Wilcox does not explicitly detail

including the selected version if the selected version of the streaming protocol is

not the first version of the streaming protocol.

Williams, discloses a method and system for generating and maintaining property

sets with unique format IDs including the originating version (or first version) [Williams,

col 6 lines 5-37;col 36 lines 5-35]

Therefore it would have been obvious to an ordinary skill in the art at the time

the invention was made to incorporate the object-oriented program (or Read/Write

modules) which generates and maintains data streams including the originating version

as taught by Williams into the Wilcox's apparatus in order to utilize the object

serialization process. Doing so would provide persistent registry to control and maintain

the relationship between the originating or first version in comparison to the selected

version and subsequent or addition version of data streams.

8.   As per claim 2, Wilcox-Williams disclose the step of receiving the data segment

from a data stream using a read module of the type which implements a second

selected one of the plurality of versions of the streaming protocol, the receiving step

including the steps of:

        receiving the first stream of data [Wilocx, data object, col 14 line 20];

        if the second selected version is earlier than the first selected version, receiving

each additional stream of data according to each subsequent version of the streaming

protocol up to and including the second selected version, and disregarding any

remaining data in the data segment [Wilcox, addition and subsequent frim Mfile, col 35

lines 17-47];

        if the second selected version is equal to or later than the first selected version,

sequentially receiving the additional streams of data according to each subsequent

version of the streaming protocol up to and including the second selected version

[Wilcox, an earlier version, col 9 lines 56-60]; and

        testing, prior to receiving each additional stream of data, whether an end of the

data segment has been detected, and if so, terminating reception of the data segment

prior to receiving the additional stream of data according to the second selected version

[Wilcox, test object, col 18 lines 17-25].

9.   As per claim 3, Wilcox-Williams disclose the data segment is an object [Wilcox,

data object, col 14 lines 20 et seq].

10.   As per claim 4, Wilcox-Williams disclose the data segment includes all of the

data necessary to reconstruct the object; whereby the data stream is serial [Williams,

serialized object, col 8 lines 60-65][Wilcox, serialized, col 29 lines 38-46; col 30 lines 44-

67].

11.   As per claim 5, Wilcox-Williams disclose the testing step includes the step of

initializing object data that is not received from the data stream to a default value

[Wilcox, test object, col 18 lines 17-25].

12.   As per claim 6, Wilcox-Williams disclose transmitting an object type for the data

segment; and receiving the object type, including allocating and initializing an object

when receiving the data segment based upon the object type [Wilcox, object type, col

11 lines 27-48].

13.   As per claims 7,8, Wilcox-Williams disclose the read and write modules are

resident on the same / separate computer as a design choice.

14.   As per claim 10, Wilcox-Williams disclose no additional tags are embedded in the

data segment between the begin and tags which is equivalent to data stream with

sequence start (i.e.: begin tag), sequence end (i.e.: end tag) and no additional tags of

other stream [Wilcox, delimiting symbol, col 6 lines 17; start and end flags, col 27 lines

1-18].

15.   As per claims 11,23 Wilcox-Williams disclose determining whether the data

segment is stored in a current context for the data stream; if so, transmitting an alias tag

in lieu of segment; and not, storing the data segment in the current context as inherent

feature of using flag on data stream.

16.   As per claim 12, Wilcox-Williams disclose the data is a non-random access data

stream as inherent feature of data stream [Wilcox, in-stream, col 2 line 52].

17.   As per claims 13,24 and 30 contain the similar limitation of claim 1 except the

step testing [Wilcox, testing purposes, col 5 line 60], prior to receiving each additional

stream of data, whether an end of the data segment has been detected, and if so,

terminating reception of the data segment prior to receiving the addition stream of data

according to the selected version [Wilcox, additional information, col 4 lines 35-44;

terminating flag bit, col 27 lines 19-31].

18.   As per claims 14 and 25 Wilcox-Williams disclose if the end of the data segment

has not been detected upon receiving the additional stream of data according to the

selected version, disregarding any remaining data in the segment as inherent feature of

decoding data stream [Wilcox, decoding, col 10 lines 35, Fig 16 C].

19.   As per claim 15 Wilcox-Williams disclose storing the data segment current

context, including any disregarded data therefrom [Wilcox, the same object or different

objects, col 5 lines 2].

20.   As per claims 16,20 and 26, Wilcox-Williams disclose the data segment is an

object [Wilcox, data object, col 5 lines 37-48].

21.   As per claims 17 and 21, Wilcox-Williams disclose the testing includes the step of

initializing object data that is not received from the data stream to a default value

[Wilcox, testing purposes, col 5 line 60].

22.   As per claim 18, Wilcox-Williams disclose the transmitting an object type or

version type for the data segment; and receiving the object type, including the steps of

allocating and initializing an object when receiving the data segment based upon the

object type [Wilcox, col 11 lines 28-62].

23.   As per claim 28, Wilcox-Williams disclose A computer system comprising first

and second computers that transmit a data segment in a data stream from the first

computer to the second computer [Wilcox, the network between different computers, col

40 lines 28-34], the first computer comprising mean for implementing a first selected

one of a plurality of versions of a streaming protocol, and the second computer

comprising mean, for implementing a second selected one of the plurality of versions of

the streaming protocol, wherein the second selected one of the plurality of versions of

the streaming protocol is additive to the first selected on of the plurality of versions of

the streaming protocol [Wilcox, version and objects is consistent, col 9 lines 4-18], and

wherein:

(a) the first computer includes a write module for transmitting the data segment,

wherein the write module outputs a first stream of data according to a first version of the

streaming protocol, and if the first selected version is not the first version of the

streaming protocol [Williams, the originating version (or first version) col 6 lines 5-37;col

36 lines 5-35], the write module sequentially appends to the first stream of data

additional streams of data according to each subsequent version of the streaming

protocol up to and including the first selected version [Wilcox, in-stream, col 2 line 52;

read-write the value of container or object, col 8 lines 28-36; an earlier version, col 9

lines 56-60; the alteration selected and type of object, col 8 lines 13-28; the

sequentially-appended objects, col 17 lines 58-67; every additive alteration (insert,

replace, append) creates a new object, col 29 lines 38-57]; and

(b) the second computer includes a read module for receiving the data segment

from the first computer, wherein the read module receives the first stream of data,

wherein if the second selected version is earlier than the first selected version, the read

module receives each additional stream of data according to each subsequent version

of the streaming protocol up to and including the second selected version [Wilcox, in-

stream, col 2 line 52; read-write the value of container or object, col 8 lines 28-36; an

earlier version, col 9 lines 56-60; the alteration selected and type of object, col 8 lines

13-28; the sequentially-appended objects, col 17 lines 58-67; every additive alteration

(insert, replace, append) creates a new object, col 29 lines 38-57], and disregards any

remaining data in the data segment, wherein if the second selected version is equal to

or later than the first selected version, the read module sequentially receives the

addition streams of data according to each subsequent version of the streaming

protocol up to and including the second selected version [Wilcox, in-stream, col 2 line

52; read-write the value of container or object, col 8 lines 28-36; an earlier version, col 9

lines 56-60], and

    wherein, prior to receiving each additional stream of data, the read module

detects whether an end of the data segment has been detected, and if so, terminates

reception of the data segment prior to receiving the additional stream of data according

to the second selected version [Wilcox, delimiting symbol, col 6 lines 17; start and end

flags, col 27 lines 1-18; additional information, col 4 lines 35-44; terminating flag bit, col

27 lines 19-31].

24.   As per claims 2,31 and 32 Wilcox-Williams disclose the step of testing for a

premature end tag and terminating the reception of the data segment when a premature

end tag (i.e.: a step of confirm a termination before end tag) [Wilcox, testing purposes,

col 5 line 60; start and end flags, col 27 lines 1-18]

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Thong Vu*, whose telephone number is (571)-272-3904. The examiner can normally be reached on Monday-Thursday from 6:00AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Andrew Caldwell*, can be reached at (571) 272-3868. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval IPAIRI system. Status information for published applications may be obtained from either Private PMR or Public PMR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thong Vu
Primary Examiner
Art Unit 2142